ORISSA HIGH COURT
CUTTACK

O.J.C. NO. 11992 OF 1999

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Smt. Purna Prava Roul ..... Petitioner

Versus

State of Orissa & others ..... Opposite Parties

For Petitioner - M/s B.K.Mohanty,
R.Mohanty,
P.K.Bhuyan,
S.K.Patnaik and
Sk. Q. Ahmed

For Opp.Parties - Addl. Government Advocate

PRESENT: -

THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY

Date of hearing & judgment : 23.03.2006

I.M.QUDDUSI,J. The petitioner has approached this Court by filing the instant writ application, inter alia, challenging the impugned judgment and order dated 25.03.1999 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No.1558(C) of 1999 and the order dated 15.09.1998 passed in Review Petition No.58(C) of 1998, which had been filed against the order passed in O.A. No.317(C) of 1998.

2. The reliefs claimed by the petitioner in the instant writ application are reproduced below:-

> " Under the facts and circumstances, the petitioner most humbly and respectfully prays that the Hon'ble Court may be pleased to ;issue a writ in the nature of certiorari or any other appropriate writ/writs, order/orders, direction/ directions quashing the order passed in Review Application No.58/C/1998 on 15-9-1998, order passed in OA No.1558/C/1999 on 25-8-1999 and the order passed by the OP No.3 in Annexure-12 on 5.7.1999;
>
> And further be pleased to hold that the petitioner has been continuing in the post of Asst. Store Keeper rightly;
>
> And further to direct the Ops not to interfere with the appointment of the petitioner as Asst. Store Keeper;
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> And further to direct the Ops to fix the pay of the petitioner as per the Rules, 1989, 1990 and thereafter and pay the petitioner her increment as due;
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> And further be pleased to direct to pay the petitioner all her service and financial benefits retrospectively;
>
> And further be pleased to pay the petitioner the litigation cost for the humiliation and harassment due to the inaction of the Ops;
>
> And further be pleased to pass any other order/orders as deemed fit and proper;
>
> And further be pleased to allow the writ with costs;
>
> And for this act of kindness, the petitioner as in duty bound shall ever pray."

3. At the outset, learned counsel for the petitioner submitted that the petitioner does not want to press the relief claimed in para-3, as quoted above, i.e., "and further to direct the opposite parties not to interfere with the appointment of the petitioner as Asst. Store Keeper". Therefore, we are not concerned with the validity of continuance of the petitioner in the post of Assistant Store Keeper.

4. It appears that the Tribunal, while passing the order dated 15.09.1998 in the above-mentioned review petition, has referred to the statement of the learned Additional Government Advocate that he had already sent a proposal to the Government for moving this Court against the order of the Tribunal against which the review had been filed. Therefore, the Tribunal did not prefer to adjudicate upon the matter and disposed of the O.A. with the observation that it would be proper to wait for the decision of this Court since the petitioner's grievance in the O.A., which arises out of the direction given in an earlier O.A., can also be raised before this Court land the petitioner would be a necessary party to the writ petition.

5. In O.A. No.317(C) of 1998, vide judgment and order dated 07.02.1998, a direction was issued by the Tribunal to fix the pay of the petitioner as per rules. The review petition filed by the State Government against the said order was dismissed vide order dated 15.09.1998, the operative part of which, as given in paragraph-4, is reproduced hereunder:-

> "4. If the applicant's promotion was irregular, there are separate avenues available to the departmental authorities for correcting the irregularity. But this should not be done by approaching the Tribunal on a Review Petition with reference to an application in which the claim was not regularisation of service of the applicant and in which the Tribunal had not passed any order to that effect. The Review Petition is accordingly dismissed."

6. The plea of the opposite parties is that the petitioner was promoted from Class-IV post to Class-III post, i.e., Assistant Store Keeper, when she was having less than two years experience in Class-IV post. Government of Orissa in the General Administration Department vide G.O. No.16858/Gen., dated 25.09.1986 had decided that 50% of the vacancies arising in a particular year in the category of Class-III posts like Recorder, Assistant Recorder, Diarist, Pasting

Clerk and similar other posts, in which noting and drafting are not ordinarily required, should be filled up by Class-IV employees who have passed at least M.E. School Certificate Examination or an equivalent examination and have rendered not less than 5 years of service under the Government, provided they come out successful in a qualifying test prescribed for the purpose. Paragraph-4 of the above Government Order provides that the candidates will be subjected to a simple viva-voce test for testing their intelligence, general knowledge and ability to read and write simple English and Oriya. This test should be regarded as qualifying test and not a merit test so that the senior successful employees are not superseded by the junior employees by virtue of securing more marks in the qualifying test.

7. Since we are not considering whether the petitioner was promoted regularly or not, we refrain from making any observation at this stage in this regard, more so, when the petitioner has not prayed for the same, as seen from the reliefs claimed by her. Therefore, the opposite parties are at liberty to deal with the same in accordance with law.

8. Now, if a person is holding a particular post with a particular pay scale, in which annual increment is permissible, his/her annual increment cannot be withheld unless an order in that regard after holding proceeding against him/her is passed. In the instant case, without any cause, the annual increment of the petitioner has been withheld although it is undisputed that she is working in the post of Assistant Store Keeper, in a particular pay scale, in which annual increment is admissible under the rules.

9. In view of the facts and circumstances mentioned above, we set aside the impugned order of the Tribunal passed in O.A. No.1558(C) of 1999 and direct the opposite parties to accord annual increment to the petitioner, which have become due and will fall due, and pay the arrears thereof. The above exercise shall be completed

within four months from the date of communication of this order. We, however, are not inclined to interfere with the order dated 15.09.1998 passed by the Tribunal in Review Petition No.58(C) of 1998.

10. The writ petition is disposed of accordingly.

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I.M.Quddusi,J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
March 23, 2006 / ***Routray***